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FILED
MAR - 3 2014
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

AVELINO BAUTISTA,

Plaintiff,

v.

GC SERVICES, L.P.,

Defendant.

Case No.: **014-0982**
COMPLAINT
(Unlawful Debt Collection Practices)

USC

Plaintiff, AVELINO BAUTISTA ("Plaintiff"), by his attorneys, KROHN & MOSS, LTD., alleges the following against Defendant, GC SERVICES, L.P., ("Defendant"):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.*
2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), Cal. Civ. Code § 1788, *et seq.*

JURISDICTION AND VENUE

3. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court

1 without regard to the amount in controversy,” and 28 U.S.C. § 1367 grants this court
2 supplemental jurisdiction over the state claims contained within.

3 4. Defendant conducts business in the State of California, and therefore, personal
4 jurisdiction is established.

5 5. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

6 **PARTIES**

7 6. Plaintiff is a natural person residing in Newark, Alameda County, California.

8 7. Plaintiff is a consumer as that term is defined by 15 U.S.C. § 1692a(3) and is a “debtor”
9 as defined by Cal. Civ. Code § 1788.2(h), and according to Defendant, Plaintiff allegedly
10 owes a debt as that term is defined by 15 U.S.C. § 1692a(5) and Cal. Civ. Code §
11 1788.2(h).

12 8. Defendant is a debt collector as that term is defined by 15 U.S.C. § 1692a(6) and Cal.
13 Civ. Code § 1788.2(c), and sought to collect a consumer debt from Plaintiff.

14 9. Defendant is a debt collection Corporation with an office in Houston, Texas.

15 10. Defendant acted through its agents, employees, officers, members, directors, heirs,
16 successors, assigns, principals, trustees, sureties, subrogees, representatives, and
17 insurers.

18 **FACTUAL ALLEGATIONS**

19 11. Defendant places collection calls to Plaintiff seeking and demanding payment for an
20 alleged debt.

21 12. Plaintiff’s alleged debt owed arises from transactions for personal, family, and household
22 purposes.

23 13. Defendant called Plaintiff’s telephone number at 510-793-90XX.

24 14. On February 6, 2014 at approximately 9:24am, Defendant called Plaintiff and left a
25 voicemail message.

1 15. In the voicemail message, Defendant's representative, "Jesse Portillo," failed to disclose
2 the name of the company placing the call, failed to state the nature of the call, and failed
3 to disclose that the call was from a debt collector. *See* Transcribed Voicemail Message
4 attached hereto as Exhibit A.

5 16. In the voicemail message, Defendant's representative, "Jesse Portillo", directed Plaintiff
6 to call him back at 800-285-3417, which is a number that belongs to Defendant. *See*
7 Exhibit A.

8 17. Defendant is using false, deceptive and misleading means in connection with attempting
9 to collect a debt by not identifying the purpose of its phone calls or that they are an
10 attempt to collect a debt.

11
12 **COUNT I**
DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

13 18. Defendant violated the FDCPA based on the following:

- 14 a. Defendant violated § 1692d of the FDCPA by engaging in conduct the natural
15 consequence of which is to harass, oppress, or abuse Plaintiff;
- 16 b. Defendant violated § 1692d(6) of the FDCPA by placing telephone calls without
17 meaningful disclosure of the caller's identity;
- 18 c. Defendant violated § 1692e of the FDCPA by using false, deceptive, and
19 misleading representations in connection with the collection of a debt.
- 20 d. Defendant violated § 1692e(10) of the FDCPA by using false and deceptive
21 means in an attempt to collect a debt.
- 22 e. Defendant violated § 1692e(11) of the FDCPA by failing to disclose in its
23 communications that the communication was from a debt collector.

24 WHEREFORE, Plaintiff, AVELINO BAUTISTA, respectfully requests judgment be
25 entered against Defendant, GC SERVICES, L.P., for the following:

1 19. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15
2 U.S.C. 1692k.

3 20. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,
4 15 U.S.C. 1692k.

5 21. Any other relief that this Honorable Court deems appropriate.

6 **COUNT II**
7 **DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION**
8 **PRACTICES ACT**

9 22. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as
10 the allegations in Count II of Plaintiff's Complaint.

11 23. Defendant violated the RFDCPA based on the following:

- 12 a. Defendant violated the § 1788.17 of the RFDCPA by failing to comply with the
13 statutory regulations contained within the FDCPA, 15 U.S.C. § 1692, *et seq.* to
14 wit: Section 1692d and 1692e.

15 WHEREFORE, Plaintiff, AVELINO BAUTISTA, respectfully requests judgment be
16 entered against Defendant, GC SERVICES, L.P., for the following:

17 24. Statutory damages of \$1,000.00 pursuant to the Rosenthal Fair Debt Collection Practices
18 Act, Cal. Civ. Code § 1788.30(b).

19 25. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection
20 Practices Act, Cal. Civ Code § 1788.30(c).

21 26. Any other relief that this Honorable Court deems appropriate.

22 DATED: February 26, 2014

RESPECTFULLY SUBMITTED,

23 KROHN & MOSS, LTD.

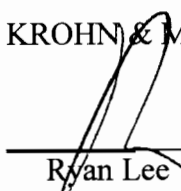
24 By: 
25 Ryan Lee
Attorneys for Plaintiff,
AVELINO BAUTISTA

EXHIBIT A

“Hi Avelino Bautista, this is Jesse Portillo. Please give me a call back at 1-800-285-3417. Thank you.”